



DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Non-Agricultural Employment in the United States

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department) is issuing this notice to announce to employers and other interested stakeholders about a process change to better assure fairness regarding the issuance of H-2B temporary labor certifications due to the unprecedented volume of applications received on January 1, 2018.

FOR FURTHER INFORMATION CONTACT: William W. Thompson, II, Administrator, Office of Foreign Labor Certification, Box #12-200, Employment & Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone number: 202-513-7350 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627.

SUPPLEMENTARY INFORMATION:

H-2B Visas: Statutory Background and OFLC Process

The Immigration and Nationality Act (INA) sets the annual number of aliens who may be issued H-2B visas or otherwise provided H-2B nonimmigrant status by the

Department of Homeland Security (DHS) to perform temporary non-agricultural work at 66,000. Up to 33,000 H-2B visas may be issued in the first half of a fiscal year (October 1 to March 31), and the remaining semi-annual allocation of 33,000 visas will be available for employers seeking to hire H-2B workers during the second half of the fiscal year (April 1 to September 30). This announcement concerns the processing of the H-2B temporary labor certification applications for the April 1 - September 30, 2018 period of need.

The Employment and Training Administration's Office of Foreign Labor Certification (OFLC) process for obtaining an H-2B certification is a two-step process for employers. Employers must first file a complete and accurate *Application for Temporary Employment Certification* (ETA Form 9142B). Following review and acceptance from OFLC, the employer must then conduct recruitment of U.S. workers and file a recruitment report. The Department reviews those reports and issues final labor certification decisions to employers who comply with all regulatory requirements as they are returned to OFLC by employers. Employers granted temporary labor certification are then eligible to file a petition with the United States Citizenship and Immigration Services (USCIS) at the DHS.

Process Change for Granting Temporary Labor Certification

Because of the intense competition for H-2B visas in recent years, the semi-annual visa allocation, and the regulatory requirement that employers apply with OFLC for a temporary labor certification 75 to 90 days before the start date of work, employers who wish to obtain visas for their workers under the semi-annual allotment for periods of need

beginning from April 1 - September 30, 2018, must promptly apply for a temporary labor certification and then file a petition with USCIS before the cap is reached. As a result, OFLC typically experiences a significant "spike" in labor certification applications at the beginning of January for temporary or seasonal jobs during the U.S.'s early spring and summer weather months.

Thus, on January 1, 2017 (FY 2017), OFLC received 1,538 applications covering approximately 26,673 worker positions for a work start date of April 1, 2017; approximately 80% of the entire semi-annual visa allocation of 33,000. By contrast, on January 1, 2018, OFLC received approximately 4,498 applications covering 81,008 worker positions requesting an April 1, 2018, start date of work. This unprecedented level of employer requests for H-2B workers on January 1, 2018 is approximately three times greater than the number of applications received on January 1, 2017, and more than two and one-half times greater than the 33,000 semi-annual visa allotment for FY 2018 permitted under the INA. In previous years, OFLC processed applications as expeditiously as possible in a manner irrespective of the time of day the application was filed, only focusing on processing applications by the day they were filed. Although OFLC is working as expeditiously as possible to issue first actions, review responses to Notices of Deficiency, and issue Notices of Acceptance, the overwhelming workload this year has strained OFLC's processing system and resulted in delays for the majority of all applications filed on January 1. OFLC expects the first 2,400 applications filed on January 1 (which represent approximately 40,000 worker positions) will be processed for first actions by next week, with the remainder of all filed applications processed for first actions in the weeks that follow.

Employers receiving Notices of Acceptance can proceed to meet the additional regulatory requirements, including recruitment of U.S. workers and submission of recruitment reports. Employers receiving Notices of Deficiency that are corrected, and who then receive a Notice of Acceptance, can also proceed to meet the additional regulatory requirements. In order to promote fairness for employers in accessing the H-2B program and due to the unprecedented volume of applications on January 1, OFLC is making a change to its process regarding the issuance of final labor certification decisions. This process change will better reflect the sequential order in which employers filed applications. Thus, OFLC will not begin releasing certified H-2B applications (Form ETA-9142B *Application for Temporary Employment Certification*) until February 20, 2018. On that day, OFLC will release certified H-2B applications that have met all regulatory requirements as of that day *in sequential order based on the original calendar day and time the application was filed (i.e., receipt time)*. Thereafter, OFLC will continue to release certified H-2B applications in a sequential manner until all applications are released. OFLC will continue to issue rejections, withdrawals, and denials of labor certification applications in accordance with standard procedures. This process change will allow employers who filed promptly on January 1, 2018, sufficient time to meet regulatory requirements, including the recruitment and hiring of qualified and available U.S. workers, thus preserving the sequential order of filing that took place on January 1, 2018, to the extent possible.

As required, OFLC will grant temporary labor certification only after the employer's H-2B application has met all the requirements for approving labor certification under 20 CFR 655.50 and the subpart. In accordance with regulatory requirements, OFLC will

send all certified H-2B applications to the employer, or the employer's authorized attorney or agent, by means normally assuring next day delivery.

Signed in Washington, D.C. this 18th day of January 2018.

William W. Thompson, II,
Administrator,
Office of Foreign Labor Certification.

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